of the Nebraska courts holding that telegraph companies are common carriers, the familiar rule of *Hadley* v. *Baxendale* was avoided in this case by bringing the action in tort for a breach of duty. In jurisdictions which have such a statute such a rule has been followed. *Western Union Tel. Co.* v. *Eubank,* 100 Ky. 591; *Fisher* v. *Western Union Tel. Co.* 119 Wisc. 146. The unusual point in this case is the fact that the message was partly in cipher and that the mistake was in the part not in cipher. The question of liability for cipher messages does not seem to have been touched on in this case but it seems it might well have been urged as a defense. The general rule is that the transmitting company is not liable for more than nominal damages in case of cipher messages. *Western Union Tel. Co.* v. *Wilson,* 32 Fla. 527; *Western Union Tel. Co.* v. *Martin,* 9 Ill. App. 587. In some of the jurisdictions which have held telegraph companies as common carriers and unable to limit their liability, the rule is applied to cipher messages as well as others. *Postal Telegraph Co.* v. *Wells,* 82 Miss. 733; *Western Union Tel. Co.* v. *Eubank,* 100 Ky. 591. Such a decision would be the logical outcome of statutes like the one here cited if carried to a conclusion, but because of the attitude of the courts in regard to cipher messages, it should not be inferred from a decision like this.

DAMAGES—REMOTENESS.—Plaintiff had agreed to thresh all the grain of the defendant. He threshed the wheat and oats and then breached the contract and refused to thresh the flax. The flax was injured by the weather, not due to any fault or delay of the defendant. Plaintiff in this case is suing for the amount earned by threshing the wheat and oats and the defendant seeks to set off the damages resulting from plaintiff's failure to completely perform. *Held,* that the damages due to the failure to perform the contract were too remote and not in contemplation of the parties. *Lyon* v. *Seby,* (N. D. 1915). 151 N. W. 31.

This case is avowedly decided on the authority of *Hayes* v. *Cooley,* 13 N. D. 204 and there is no attempt to reason out or justify the decision. *Hayes* v. *Cooley* does endeavor to do this and distinguish a set of facts exactly like those in the instant case, from facts and law as laid down in *Smead* v. *Foord,* 1 El. & El. 602 and *Houser* v. *Pearce,* 13 Kans. 104. In all of these cases the facts were substantially the same, namely that because of a breach of contract, there was a failure to cut certain grain which was injured or destroyed. In *Smead* v. *Foord,* the failure was to deliver a threshing machine, in all the others it was simply a refusal to cut. The difference which the North Dakota court sees in these cases is that in the English and Kansas cases the circumstances were such that it was within the contemplation of the parties that damage might result to the grain from failure to perform the contract. It is very hard to see, especially in the Kansas case, how the parties there could have contemplated injury to the grain any more than the parties in the North Dakota cases did, as the facts seem to be identical. It would seem to be very much in the minds of the contracting parties that failure to cut the grain might very probably result in loss or injury. There is no doubt that the instant case follows the law of North Dakota, but the weight of authority and reasoning would appear to be otherwise.